

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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| In the Matter of:                          | ) |                     |
|  | ) |                     |
| Creation of A Low Power Radio Service      | ) | MM Docket No. 99-25 |
|  | ) |                     |
| Amendment of Service and Eligibility       | ) | MM Docket No. 7-172 |
| Rules for FM Broadcast Translator Stations | ) | RM-11338            |

**COMMENTS OF KWMR, WEST MARIN COMMUNITY RADIO**

**Introduction:**

KWMR, by its attorney, here submits comments in response to the Commission's Third Further Notice of Proposed Rule Making, FCC 11-105, released on July 12, 2011, and published in the Federal Register on July 27. KWMR is licensee of KWMR (FM-Ed), serving Point Reyes Station and surrounding area, in Marin County, located North of San Francisco. Our service area in West Marin is rural and separated by mountainous terrain from the eastern, more densely populated part of the County.

**1. KWMR's Interest in Rural FM Translators.**

As shown on the contour map, Attachment A, KWMR has extended its coverage down the Coast by FM translator, to include the Coastal communities of Bolinas and Stinson Beach. K210EH (Facility ID 93568) was licensed in 2004, and is estimated to add some 1,939 people, or nearly 30 per cent, to our primary service area listener population of 4,931 (2010 Census, block centroid method).<sup>1</sup>

KWMR during the 2003 window applied for a translator, BNPFT-20030314ACM, Facility ID 146312, nominally to reach Lagunitas. Referring to the map, Attachment A, this facility would link the Station's overall coverage from Stinson Beach to the top of Tomales

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<sup>1</sup> The station also employs a booster, KWMR-FM2, Facility ID 165585, to strengthen coverage in the immediate one or two km distance around the community of license.

Bay. It would supplement service inside the primary service contour, where a booster still is needed. And it would extend coverage to the small, isolated communities to the East: Lagunitas, Forest Knolls, and Woodacre. Overall it is predicted to add 5,703 people receiving service, or more than the primary Station currently is able to deliver.

The 2003 Lagunitas application was mutually exclusive with two other proposals, Big Bend Broadcasting, Daly City, CA (2010 population 101,123) BNPFT-20030314CDW and Educational Media Foundation, San Francisco Ca (2010 population 805,235) BNPFT-20030314ASL. The Big Bend application was dismissed on April 15, 2008. After several discussions with Educational Media Foundation, its application was dismissed voluntarily on May 19, 2009. KWMR did not promise or pay anything in connection with these dismissals, and submitted an affidavit of no consideration. There followed a series of requests to the Commission staff, in writing and in person, imploring that this singleton Lagunitas FM translator application be accorded normal process and if found acceptable, granted. These requests were refused.

## **2. The Proposals in the Third Further Notice of Proposed Rule Making Would Not Serve the Public Interest to the Degree that They Would Result in the Dismissal of the Lagunitas FM Translator Application.**

KWMR agrees with the key finding of the Notice that processing of the pending avalanche of 6,500 FM translator applications, including the high volume by abusive mass filers (see para. 4) would thwart the statutory goal of enabling LPFM development. KWMR, as a noncommercial, community broadcaster, supports LPFM in general and counts LPFM broadcasters as a close cohort of publicly-spirited people committed to local service. The last thing we could wish is to put a spanner across the path of needed new LPFM service.

The problem we have is that the Commission's proposal, by disregarding the

distinction between truly urban and truly rural areas, may have cast the net too widely in its search for new channels.

Footnote 20 of the Notice sets forth the parameters used by the Bureau to assess LPFM spectrum availability. The analysis begins with the 150 top markets as defined by Arbitron. In this case, the San Francisco market is defined to include nine counties.<sup>2</sup> To some extent these definitions were created for convenience of the rating service. Originally radio ratings were dependent exclusively on the mass mailing of paper diaries to a sample. Consolidation by zip code and county for mailing was a necessary organizing principle. As a radio market, however, this bends reality in three ways. This geographic area, from Cloverdale in North Sonoma to Gilroy in South Santa Clara spans some 160 miles and in no sense is a single radio market. And secondly, the fourth radio market it may well be, but huge swaths of this land are rural, indeed encompassing some of the best agricultural land in North America. And third, of course, radio reception does not follow County lines.

The staff overlaid this with a matrix, half a degree wide (about 26 miles) and half a degree tall (about 35 miles). This area was centered over the “center city core” presumed to identify the main municipal or populated area. Points were sampled within this quadrilateral shape to ascertain LPFM spectrum availability. Inasmuch as San Francisco revealed zero channels, the proposal is to return all pending translators in the San Francisco market. We submit that this would be arbitrary, as it affects our own situation, and perhaps many others. An area 35 miles tall and fitted over the core SMSA of San Jose – Oakland – San Francisco is not relevant to any spectrum availability in Marin County or any of the North Bay. But worse, it has not been explained how the absence of

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<sup>2</sup> Sonoma, Napa, Solano, Contra Costa, Alameda, Santa Clara, San Mateo, San Francisco, and Marin. This is the number four market by Arbitron, with Spring, 2011, population of 6,186,900.

channels in the identified or supposed core would warrant the return of all translators up and down the entire Arbitron market. And finally, we submit that this blunt instrument makes no distinction between high demand core cities and areas that, by comparison, are seriously underserved by all mass media.

### **3. KWMR's Proposed Service by FM Translator Sheds Important Light on the Statutory interpretation of "Needs of the Community."**

The Question is posed in the Notice at paras. 14 – 15 whether translators can provide meaningful local service that addresses community needs. KWMR and its FM translator proposal are excellent illustrations of how translators can, and often do address local community needs as well as provide vital information and service in times of emergency. Currently there is no local, originating radio station in KWMR's proposed translator service area.

All roadways in the coverage areas of the primary broadcast and the proposed translator of KWMR are rural, two-lane roads. The many villages and rural farms of West Marin are frequently cut off from the outside world for extended periods due to blocked or flooded roads, landslides and fires. The Point Reyes National Seashore (PRNS), part of the National Park Service, is located in West Marin, attracting thousands of visitors daily, many of whom do not entirely know their way around and all of whom depend on local resources in an emergency.

West Marin experiences floods, fires and power outages on a regular basis. The major geologic feature in the area is the San Andreas fault, upon which most of the towns are located. KWMR is the only broadcast outlet providing local news and entertainment to West Marin. As such it has an acknowledged responsibility to provide vital information to its listening area in an emergency. KWMR listeners have come to depend on KWMR for this information. The law enforcement and fire agencies in West Marin contact KWMR

directly when they need to provide important information to the public.

The hilly terrain of West Marin prevents the main KWMR signal from reaching many communities in our listening area. It is only through the use of translators that KWMR can properly broadcast vital news and emergency information to listeners. We maintain that this is the very definition of local service — meeting the “needs of the community” and urge the Commission to recognize the fact that local translators do indeed have a vital role in serving these needs.<sup>3</sup>

**4. Recommendations: If the Commission Proceeds with Its Band-Clearing of Translators in Major Markets, it Should Carve out an Exception for Service Extensions to Rural Areas.**

KWMR generally agrees that a numerical cap on the processing of existing translator filings will not create sufficient opportunities for new LPFM entry – an important public interest goal reflected by the legislation. The staff is to be commended for working hard to devise alternative strategies, that seek to accommodate the many cross pressures on this key spectrum resource. But prior to the stage where these FM translator applications are returned, a way must be found first to process and grant clean, uncontested applications that serve rural areas.

A legitimate concern would be that no such exception should undermine the attempt to open even a precious few channels for new LPFM in urban markets. To make sure this does not happen, the Commission could restrict the processing opportunity in a number ways, singly or in combination. Eligible applications could be required to meet the following criteria:

- That the proposed FM translator is an uncontested “singleton” at the time that the processing opportunity is opened;
- That the proposed translator would rebroadcast a primary station, commercial or

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<sup>3</sup> Admittedly the same cannot be said of satellite-fed translators, offering only distant market fare.

noncommercial, that broadcasts a minimum of twelve hours per day (See Sec. 73.561(b) of the Rules);

- That the proposed FM translator have primary service contour overlap (60 dBu) with the station being rebroadcast;
- That the proposed FM translator be permanently restricted to receive the primary signal over the air, and not by microwave feed, internet feed, or satellite;

If these restrictions were adopted it probably would be unnecessary to require, further, that the proposed FM translator serve only a rural area. That can become a difficult matter to prove (or disprove), especially where a proposed service area may diverge from its preclusionary effect on future LPFM and FM translators in surrounding areas.

With a modification such as the one suggested here, KWMR supports the Commission's overall approach, and hopes that FM translator processing and a filing opportunity for new LPFM both may go forward at an early date.

Respectfully submitted,

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